

State of California
BOARD OF EQUALIZATION

MOTOR VEHICLE FUEL TAX REGULATIONS

Regulation 1125. TWO-PARTY EXCHANGE.

Reference: Section 7362, 7363, 7368, 7369, 7372, 7451, 7651, 7652.5, 8301, and 8302, Revenue and Taxation Code.

(a) GENERAL. In a typical two-party exchange, two suppliers who own motor vehicle fuel in terminals, i.e., who are position holders (pursuant to Section 7332 of the Revenue and Taxation Code), agree to give each other access to the motor vehicle fuel each owns. Both suppliers have customers in the same terminal areas. One supplier (the delivering supplier) owns fuel in one terminal, and the other supplier (the receiving supplier) owns fuel, usually in a different terminal. Each supplier agrees to exchange fuel it owns for fuel the other supplier owns. A two-party exchange contract allows each supplier to have rack removal capability at a terminal where the other supplier is a position holder, in order to supply fuel to its customers in that terminal area. The receiving supplier takes the place of the delivering supplier when the motor vehicle fuel is removed from the terminal at the rack. A two-party exchange may involve fuel held in terminals located in one or more states and may involve one or more types of fuel. For purposes of this regulation, however, at least one of the terminals involved in a two-party exchange must be located in this state, and the requirements for reporting transactions to the Board pursuant to this regulation pertain only to transactions involving terminals located in this state.

(b) DEFINITIONS.

(1) Notwithstanding Section 7337 of the Revenue and Taxation Code, “two-party exchange” means a transaction, other than a sale, that occurs at the time of removal of motor vehicle fuel across the rack and that meets all the following conditions:

(A) The terminal operator, delivering supplier, and the receiving supplier are each registered with the Board to file electronically and have filed electronically with respect to the subject two-party exchange; and

(B) The terminal operator treats the receiving supplier in its books and records as the person that removes the motor vehicle fuel across a terminal rack for purposes of reporting the two-party exchange to the Board; and

(C) The two-party exchange is the subject of a written contract between the delivering supplier and the receiving supplier, acceptable evidence of which includes, but is not limited to, exchange statements, exchange differential invoices, exchange reconciliations, or any other similar writing between the parties; and

(D) All of the reporting requirements set forth in subdivisions (d) and (e) of this section are met.

(2) “Delivering supplier” means a supplier, licensed pursuant to Section 7451 of the Revenue and Taxation Code, who is the position holder of the motor vehicle fuel in the terminal on whom the motor vehicle fuel tax is imposed on removal of motor vehicle fuel from the rack for all purposes other than for a two-party exchange.

(3) “Receiving supplier” means a supplier, licensed pursuant to Section 7451 of the Revenue and Taxation Code, on whom the motor vehicle fuel tax is imposed only on removal of motor vehicle fuel from the rack as the receiving supplier under a two-party exchange.

(4) “Terminal,” as defined in Section 7339 of the Revenue and Taxation Code, includes, for purposes of this regulation, a terminal located at a refinery.

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(c) LIABILITY FOR TAX.

(1) The delivering supplier is primarily liable for taxes imposed under Section 7362 or Section 7363(a) of the Revenue and Taxation Code, except, when a transaction satisfies the conditions and requirements for a two-party exchange, the delivering supplier shall be relieved of motor vehicle fuel tax liability and the receiving supplier shall become primarily liable for payment of motor vehicle fuel taxes on the motor vehicle fuel removed pursuant to the two-party exchange.

(2) The receiving supplier must report the two-party exchange and remit any tax due on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel was received. The receiving supplier may claim a refund for any amounts applied by the Board to the account of the receiving supplier under a two-party exchange contract. When all parties report a transaction as a two-party exchange, the receiving supplier may not file a claim for refund of the tax on the grounds that the transaction was not a two-party exchange.

(3) If the receiving supplier fails to report or remit taxes in conformity with this regulation, then the delivering supplier shall remain primarily liable for taxes due on the removal of the motor vehicle fuel from the rack.

(d) REPORTING REQUIREMENTS – GENERALLY

(1) The terminal operator must report to the Board the two-party exchange of motor vehicle fuel between the delivering supplier and the receiving supplier.

(2) The terminal operator, the delivering supplier, and the receiving supplier must each use the same identifying information (e.g., bill of lading number) to refer to or otherwise report the subject two-party exchange.

(3) The terminal operator, the delivering supplier, and the receiving supplier must each enter the same fuel type on any report that includes a two-party exchange.

(e) REPORTING REQUIREMENTS – DELIVERING AND RECEIVING SUPPLIES. The following reporting requirements must be met in order for an exchange of motor vehicle fuel to qualify as a two-party exchange and to shift imposition of the motor vehicle fuel tax liability from the delivering supplier to the receiving supplier.

(1) The delivering supplier must report the two-party exchange and identify the receiving supplier to the terminal operator; and

(2) The delivering supplier must report to the Board a tax-free delivery of motor vehicle fuel to the receiving supplier; and

(3) The receiving supplier must report to the Board a tax-free receipt of motor vehicle fuel from the delivering supplier; and

(4) The receiving supplier must report to the Board the rack removal of motor vehicle fuel to its customers and the amount of tax due.

(f) OPERATIVE DATE. The provisions of this regulation are operative January 1, 2007

History: Adopted June 27, 2006, effective October 8, 2006.